

IOWA STATE UNIVERSITY

Digital Repository

Volume 11 | Number 6

Article 2

3-17-2000

Cases, Regulations and Statutes

Robert P. Achenbach Jr.

Agricultural Law Press, robert@agrilawpress.com

Follow this and additional works at: <http://lib.dr.iastate.edu/aglawdigest>



Part of the [Agricultural and Resource Economics Commons](#), [Agricultural Economics Commons](#), [Agriculture Law Commons](#), and the [Public Economics Commons](#)

Recommended Citation

Achenbach, Robert P. Jr. (2000) "Cases, Regulations and Statutes," *Agricultural Law Digest*: Vol. 11 : No. 6 , Article 2.

Available at: <http://lib.dr.iastate.edu/aglawdigest/vol11/iss6/2>

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in *Agricultural Law Digest* by an authorized editor of Iowa State University Digital Repository. For more information, please contact digirep@iastate.edu.

or business.¹⁵ In both *Ray* and *Wuebker*, the taxpayers maintained an ongoing farming business with the land expected to become part of the farming business at the termination of the CRP contract.

• The Sixth Circuit cited *Rev. Rul. 60-32*¹⁶ (the so-called “soil bank” program), as further supporting its conclusion that CRP payments are subject to self-employment tax where the land bears a direct nexus to the farming operation. The appellate court agreed with the language in *Rev. Rul. 60-32*¹⁷ that the benefits attributable to an acreage reserve program are included in net earnings from self-employment if the taxpayer operates the farm “personally or through agents or employees.”¹⁸ The imputation of activity of an agent was ended with a 1974 amendment.¹⁹

Implications for taxpayers

In a 1988 private letter ruling,²⁰ IRS held that, for a retired taxpayer who is not materially participating in the farm operation, payments received under the CRP program would not be considered net earnings from self-employment. In the facts of that ruling, no tenant was involved. Also, if a taxpayer's relationship to the CRP land is sufficiently passive that no trade or business is carried on, or there is no “direct nexus” to the farming operation, the CRP payments should not be subject to self-employment tax.

However, in instances where the taxpayer is carrying on a trade or business, and a direct nexus exists with the farming operation, the 15.3 percent self-employment tax is due.²¹

Taxpayers who had followed *Wuebker* in 1999 or earlier years should now file amended returns for open years inasmuch as the appellate decision in *Wuebker* is the senior “substantial authority.”

FOOTNOTES

- ¹ 110 T.C. 431 (1998). See generally 5 Harl, *Agricultural Law* § 37.03[3][b] (1999); Harl, *Agricultural Law Manual* § 4.02[1][e] (1999); Harl, “SE Tax on CRP Payments,” 9 *Agric. L. Dig.* 109 (1998).
- ² *Wuebker v. Comm’r*, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,254 (6th Cir. 2000).
- ³ I.R.C. § 1402(a)(1).
- ⁴ 2000-1 U.S. Tax Cas. (CCH) ¶ 50,254 (6th Cir. 2000).
- ⁵ Black's Law Dictionary 1299 (7th ed., 1999).
- ⁶ *Wuebker v. Comm’r*, 2000-1 U.S. TAX CAS. (CCH) ¶ 50,254 (6th Cir. 2000).
- ⁷ *Id.*
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ *Id.*
- ¹¹ T.C. Memo. 1996-436.
- ¹² 1960-1 C.B. 23.
- ¹³ T.C. Memo. 1996-436.
- ¹⁴ 2000-1 U.S. Tax Cas. (CCH) ¶ 50,254 (6th Cir. 2000).
- ¹⁵ *Id.*
- ¹⁶ 1960-1 C.B. 23.
- ¹⁷ *Id.*
- ¹⁸ *Id.*
- ¹⁹ Pub. L. No. 93-368, amending I.R.C. § 1402(a)(1).
- ²⁰ Ltr. Rul. 8822064, March 7, 1988.
- ²¹ *Wuebker v. Comm’r*, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,254 (6th Cir. 2000).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

PRESCRIPTIVE EASEMENT. The plaintiffs owned land which could be accessed only by a road over the defendant's land. The road had been used by the plaintiffs or their predecessors in ownership for more than 40 years before the defendants purchased their property. The defendants' land was unimproved and the defendants did not attempt to stop the plaintiffs' use of the road. The defendants only placed a cable across the road to discourage general public use of the road. The plaintiffs sought a declaration of prescriptive easement when they sought to sell the land. The defendant argued that the plaintiffs' use of the road was permissive and that the plaintiffs had not taken any actions to indicate an adverse possession claim for use of the road. The court held that, where the property was unimproved, the use of the property is presumed to be permissive; however, the court deferred to the findings of the trial court that the plaintiffs' use of the road was not permissive and affirmed the holding that a

prescriptive easement had arisen. *Smith v. Loyd*, 5 S.W.3d 74 (Ark. Ct. App. 1999).

ANIMALS

HORSES. The plaintiff had participated in a horseback trail ride operated by the defendant dude ranch. Before making the ride, the plaintiff signed a release which, among other things, waived the plaintiff's right to sue for damages caused by the defendant's negligence. The plaintiff was injured by a fall from a horse during the ride and sued for negligence. The plaintiff argued that the release was invalid in that it was contrary to public policy. The court held that the lease was valid and prohibited the current action because (1) the defendant did not have a special duty to protect the public during the rides since Wyoming law recognizes that participants in recreational activities assume the risks of those activities, (2) the trail ride was not particularly dangerous, (3) the plaintiff was not coerced or forced into participating in the ride, and (4) the release was clear in that, by signing it, the plaintiff was waiving a right

to sue for negligence. **Street v. Darwin Ranch, Inc.**, 75 F. Supp.2d 1296 (D. Wyo. 1999).

BANKRUPTCY

GENERAL-ALM § 13.03.*

PRODUCER'S LIEN. The debtors had operated a dairy and beverage business and a creditor had supplied the debtors with milk products. In August 1995, the creditor filed a producer's lien for delivered milk products for which payment was not made. In March 1997, the debtors filed a Chapter 13 case which was open for five months before being dismissed in August 1997. The debtors filed a second bankruptcy case in October 1998. The court held that the two year limitation period on the producer's lien under state law was tolled by the first bankruptcy case; therefore, the lien was still valid when the second case was filed. The court also ruled that the lien was valid as to the products delivered and the proceeds of the products. **In re Bosak**, 242 B.R. 400 (Bankr. N.D. Ohio 1999).

FEDERAL TAX-ALM § 13.03[7].*

BANKRUPTCY FEES. The debtor sought to deduct as business expenses the legal, accounting and U.S. trustee's fees paid in the debtor's bankruptcy case. The bankruptcy case involved \$2,915,215 of business liabilities (93.79 percent) out of a total \$3,108,382 in liabilities. The court cited *Cox v. Comm'r*, T.C. Memo. 1981-552 for the support of its holding that bankruptcy fees could be deducted where the fees were proximately caused by dealing with business liabilities in the bankruptcy case. The IRS argued that the allocation of fees to the business liabilities should be denied. The court held that 93.79 percent of the fees associated with the bankruptcy case were deductible as business expenses. **Catalano v. Comm'r**, T.C. Memo. 2000-82.

CLAIMS. This case was a consolidation of three cases on the same issue. In each case the debtor filed for Chapter 13 and failed to list the IRS as a creditor, even though the debtor had tax deficiencies. The IRS did not learn about the cases until after the claims bar date and quickly filed a claim as soon as the agency learned about the case. The court held that, although Section 502(b)(9) allowed the discharge of unallowed claims, the statute would not be applied where the debtor filed a false schedule of creditors which resulted in no notice of the case being sent to a creditor. The court held that the untimely filed claims of the IRS would be allowed and were not discharged. **IRS v. Hildebrand**, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,250 (M.D. Tenn. 2000).

DISCHARGE. The IRS had filed claims for 1987, 1988 and 1990 taxes in the debtor's Chapter 7 case filed in 1994. The IRS argued that the claims were nondischargeable because of a fraudulent return or because the debtor willfully attempted to evade or defeat the taxes. The parties each filed for summary judgment on the issue and the Bankruptcy Court granted summary judgment for the debtor because (1) the auditing agent had not recommended

a civil fraud penalty, (2) the debtor had provided documentation for much of the deductions, (3) the debtor had made several payments toward the deficiencies, and (4) the debtor had cooperated in the audit process. The appellate court affirmed, holding that the IRS had not provided sufficient evidence to overcome the record evidence supporting the lower court's ruling. **In re Fleck**, 242 B.R. 188 (M.D. Fla. 1999).

The debtor had not filed returns for 1980-1983 and had filed false Form W-2s such that only 5 percent of the taxes were collected. In 1985, the debtor voluntarily signed agreements as to the owed taxes and made some payments towards the deficiency. The debtor then filed for bankruptcy and received a discharge. The debtor argued that the taxes were also discharged but the IRS argued that the taxes were nondischargeable because the debtor willfully attempt to evade or defeat the taxes by not filing returns and filing false W-2s. The debtor argued that the debtor's cooperation with the IRS in 1985 was sufficient to negate the willful intent. The court held that the conduct of the debtor in later years did not affect the actions during the tax years involved. **In re Meyers**, 196 F.3d 622 (6th Cir. 1999).

INTEREST. The debtor owned a residence which had a fair market value in excess of the nonrecourse indebtedness against it. The mortgagor obtained relief from the automatic stay to foreclose the mortgage and the property was sold to the mortgagor for less than the amount of indebtedness, with the remaining indebtedness discharged. The debtor sought to deduct the interest owed on the residence but the IRS argued that, because the residence sold for less than the fair market value, no part of the proceeds could be allocated to interest. The court held that in a foreclosure sale of a property with discharge of nonrecourse indebtedness, the amount of discharged indebtedness was deemed the amount received for the property. Because the indebtedness included interest owed, the debtor was entitled to deduct the interest portion of the indebtedness discharged. **Catalano v. Comm'r**, T.C. Memo. 2000-82.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued proposed regulations which amend the bovine tuberculosis requirements to establish several new levels of tuberculosis risk classifications to be applied to states. The amendments would also add goats to the animals covered by the regulations and increase the amount of testing which must be done before the animals may be moved in interstate commerce. **64 Fed. Reg. 11912 (March 7, 2000).**

The APHIS has adopted as final regulations changing the classification of Arkansas from Class A to Class Free. **64 Fed. Reg. 12064 (March 8, 2000).**

LIVESTOCK IDENTIFICATION. The APHIS has announced that it plans to issue proposed regulations which would adopt the American Identification Numbering

System for eartags on livestock. The APHIS is asking for comments before the regulations are proposed. **64 Fed. Reg. 11485 (March 3, 2000).**

PERISHABLE AGRICULTURAL COMMODITIES ACT. The debtor was a PACA licensed produce handler which had granted security interests to various creditors in all of the debtor's assets. The debtor had sold all of the assets and placed the proceeds in a fund for distribution in bankruptcy. Most of the creditors held purchase money security interests in various pieces of machinery and office equipment. Several produce sellers filed PACA trust claims and sought payment from the fund. The PACA creditors argued that the PACA trust included the machinery and office equipment. The court held that the PACA trust was limited to produce inventories and the receivables and proceeds from the sale of produce. Therefore, the court held that the security interests in the machinery and equipment were not inferior to the PACA trust and that the sale proceeds from the property were not part of the PACA trust. *In re United Fruit & Produce Co., Inc.*, **242 B.R. 295 (Bankr. W.D. Pa. 1999).**

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFERS. The IRS has announced that its nonacquiescence in the following decision. The decedent owned a life interest in a trust established prior to 1985. The trust provided the decedent with the testamentary power to appoint trust corpus and the decedent's will appointed the trust property to the decedent's grandchildren. The court held that the exercise of the power of appointment did not subject the trust to GSTT because the power was exercised under the trust provisions which became irrevocable before September 25, 1985. *Simpson v. United States*, 99-2 U.S. Tax Cas. (CCH) ¶ 60,351 (8th Cir. 1999), rev'g, 17 F. Supp. 2d 972 (W.D. Mo. 1998). **AOD/CC-2000-003 (Feb. 28, 2000).**

MARITAL DEDUCTION. As reported by CCH (unpublished opinion affirming unpublished Tax Court decision): "A decedent's marital deduction with respect to a residuary bequest was reduced by the proportionate amount of estate tax owed because the decedent's will directed that all estate taxes be paid out of the property in the residuary estate. Although the applicable state (Texas) apportionment statute would have served to maximize the marital deduction, the will manifested an unequivocal intent that there be no apportionment. Therefore, the state apportionment statute was negated." *Estate of Miller*, **2000-1 U.S. Tax Cas. (CCH) ¶ 60,370 (5th Cir. 2000).**

TRANSFeree LIABILITY FOR TAX. The decedent had transferred stock to several heirs within three years before death and paid gift taxes on the transfers. The transfers and tax payments rendered the decedent nearly insolvent. The IRS determined that the gift tax paid was included in the decedent's gross estate and sought payment of the estate tax deficiency from the heirs. The heirs argued that they were not liable because the tax deficiency did not

arise from the stock transfers but from the gift tax payment and because the stock was not property included in the gross estate. The court held that the stock was included in the gross estate under I.R.C. § 2035(d)(3)(C); therefore, the heirs were liable for any unpaid estate tax, up to the value of the stock each received. *Armstrong v. Comm'r*, **114 T.C. No. 5 (2000).**

TRANSFERS WITH RETAINED INTERESTS. The decedent had inherited personal and real property from a predeceased spouse. The decedent transferred most of the decedent's real and personal property to a revocable trust for the benefit of the decedent. The trust then contributed the property to a family limited partnership in exchange for a general partnership interest. The remaining limited partnership interests were transferred without consideration to the decedent's children. The decedent was found to have continued to possess and control the property transferred to the partnership in that the decedent managed all of the partnership affairs, continued to live in the residence and commingled personal and partnership funds. The court held that the property was included in the decedent gross estate under I.R.C. § 2036(a). *Estate of Reichardt v. Comm'r*, **114 T.C. No. 9 (2000).**

FEDERAL INCOME TAXATION

BAD DEBTS. The taxpayer was a corporation with two shareholders. One shareholder had the option to purchase all of the other shareholder's stock at a discount. The shareholder had financial difficulties and the corporation decided to try to prevent the options from being held by the shareholder's creditors. The corporation loaned money to the shareholder who agreed not to exercise the options. The loan was nonrecourse and the value of the stock and options was greater than the loan amount. However, the corporation obtained the right to revoke the options if the loan was foreclosed. The shareholder defaulted on the loan and the corporation claimed a bad debt deduction for the difference between the amount owed and the options and stock received in the foreclosure. The court held that a bad debt deduction was not allowed because the transaction was, in substance, a sale of the stock and options because the shareholder had no reason to attempt to repay the loan and the purpose of the transaction was to prevent the shareholder from assigning the options and stock to the shareholder's creditors. *Rogers v. United States*, **2000-1 U.S. Tax Cas. (CCH) ¶ 50,237 (D. Kan. 1999).**

BUSINESS EXPENSES. The taxpayer claimed business deductions for various expenses associated with an attempt to sell products in the former Soviet Union. The evidence failed to show that the taxpayer completed any business transactions or even moved beyond the exploratory stage. The court held that the taxpayer was not entitled to business expense deductions because the taxpayer had not started any trade or business. The opinion is designated as not for publication. *Massa v. Comm'r*, **2000-1 U.S. Tax Cas. (CCH) ¶ 50,245 (10th Cir. 2000).**

C CORPORATIONS-ALM § 7.02.*

RETURNS. The IRS has issued temporary regulations which require corporations to file certain information with their returns. The first category of reportable transactions includes any transaction that is the same as or substantially similar to one of the specified types of tax avoidance transactions that the IRS has identified by published guidance as a listed transaction for purposes of I.R.C. § 6011 and that is expected to reduce the taxpayer's federal income tax liability by more than \$1 million in any single taxable year or by a total of more than \$2 million for any combination of taxable years. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's federal income tax liability as reported on any tax return filed on or before February 28, 2000.

The second category of reportable transactions includes transactions entered into after February 28, 2000 that are expected to reduce a taxpayer's Federal income tax liability by more than \$5 million in any single taxable year or by a total of more than \$10 million for any combination of taxable years and that have at least two of the following characteristics:

(A) The taxpayer has participated in the transaction under conditions of confidentiality (as defined in Treas. Reg. § 301.6111-2T(c)).

(B) The taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax benefits from the transaction will not be sustained, including, but not limited to, rescission rights, the right to a full or partial refund of fees paid to any person, fees that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion of the transaction to the taxpayer).

(C) The taxpayer's participation in the transaction was promoted, solicited, or recommended by one or more persons who have received or are expected to receive fees or other consideration with an aggregate value in excess of \$100,000, and such person or persons' entitlement to such fees or other consideration was contingent on the taxpayer's participation in the transaction.

(D) The expected treatment of the transaction for Federal income tax purposes in any taxable year differs or is expected to differ by more than \$5 million from the treatment of the transaction for purposes of determining book income as taken into account on the schedule M-1 (or comparable schedule) on the taxpayer's Federal corporate income tax return for the same period.

(E) The transaction involves the participation of a person that the taxpayer knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer (such as a tax exempt entity or a foreign person), and the taxpayer knows or has reason to know that such difference in tax position has permitted the transaction to be structured on terms that are intended to provide the taxpayer with more favorable Federal income tax treatment

than it could have obtained without the participation of such person (or another person in a similar tax position).

(F) The expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country. **64 Fed. Reg. 11205 (March 2, 2000), adding Temp. Treas. Reg. § 1.6011-4T.**

TAX SHELTERS. The IRS has issued temporary regulations requiring corporations to register confidential corporate tax shelters under I.R.C. § 6111(d). **64 Fed. Reg. 11215 (March 2, 2000), adding Temp. Treas. Reg. § 301.6111-2T.**

The IRS has issued temporary regulations requiring corporations to maintain a list of investors in potentially abusive tax shelters under I.R.C. § 6112. **64 Fed. Reg. 11211 (March 2, 2000), adding Temp. Treas. Reg. § 301.6112-1T.**

CASUALTY LOSSES. The taxpayer's residence was damaged by two avalanches in 1986 and 1993. In 1993 the damages amounted to \$9,000 in repairs but the taxpayer claimed a casualty loss of over \$200,000 in loss of fair market value. The loss in value resulted from the danger from avalanches during the winter and buyer resistance to buying a house in a high risk avalanche area. The court held that no casualty loss deduction would be allowed for the decrease in fair market value because the taxpayer had not demonstrated permanent damage to the taxpayer's property. **Lund v. United States, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,234 (D. Utah 2000).**

COURT AWARDS AND SETTLEMENTS. The taxpayer was fired from a teaching position and brought suit to be reinstated. The taxpayer won a judgment for reinstatement, back pay, and interest. The employer attempted to make payment on the judgment but the taxpayer refused the checks. Eventually, the employer paid the money to the court which held the funds for the taxpayer. The taxpayer argued that the payment was not included in gross income because the amount was uncertain and the taxpayer never received it. The court held that the award was included in gross income because (1) it was not paid for personal injuries, (2) was determined by a court order, and (3) was made available for the taxpayer's use in the court account. **Visco v. Comm'r, T.C. Memo. 2000-77.**

DEPRECIATION-ALM § 4.03[4].* The IRS has issued tables detailing the (1) limitations on depreciation deductions for owners of passenger automobiles first placed in service during calendar year 1999, including separate limitations on passenger automobiles designed to be propelled primarily by electricity and built by an original equipment manufacturer (electric automobiles); (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2000, including separate inclusion amounts for electric automobiles; and (3) the maximum allowable value of employer-provided automobiles first made available to employees for personal use in calendar year 2000 for which the vehicle cents-per-mile valuation rule provided under Treas. Reg. § 1.61-21(e) may be applicable.

For automobiles (other than electric automobiles) placed in service in 2000 the depreciation limitations are as follows (the amounts are almost identical to 1999):

<u>Tax Year</u>	<u>Amount</u>
1st tax year.....	\$3,060
2d tax year.....	4,900
3d tax year.....	2,950
Each succeeding year	1,775

For electric automobiles placed in service in 2000 the depreciation limitations are as follows:

<u>Tax Year</u>	<u>Amount</u>
1st tax year.....	\$9,280
2d tax year.....	14,800
3d tax year.....	8,950
Each succeeding year	5,325

Rev. Proc. 2000-18, I.R.B. 2000-___, ___.

DISASTER PAYMENTS. On February 15, 2000, the president determined that certain areas in Georgia are eligible for assistance under the Act as a result of severe storms and tornadoes beginning on February 14, 2000 **FEMA-1315-DR.**

The IRS has published a list of all areas declared disaster areas by the President and eligible for deduction of disaster losses in the year preceding the year of the disaster loss. **Rev. Rul. 2000-15, I.R.B. 2000-___.**

HOBBY LOSSES. The taxpayer operated a horse breeding activity which included as many as six horses during the tax years involved. Although the court did not specifically rule on the nine factors in Treas. Reg. § 1.183-2(b), the court held that the activity was not engaged in with the intent to make a profit. The court mentioned that the taxpayer (1) did not operate the activity in a businesslike manner, (2) was motivated primarily by a love for horses, (3) had no training or experience in breeding horses, and (4) did not seek expert advice. The court also found that the taxpayer did not keep sufficient records to demonstrate any possibility of future profits, that the activity had seven years of substantial losses and that the taxpayer had never qualified as a professional horse rider or breeder. **Brannon v. Comm'r, T.C. Memo. 2000-76..**

INTEREST RATE. The IRS has announced that, for the period April 1, 2000 through June 30, 2000, the interest rate paid on tax overpayments is 9 percent (8 percent in the case of a corporation) and for underpayments is 9 percent. The interest rate for underpayments by large corporations is 11 percent. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 is 6.5 percent. **Rev. Rul. 2000-16, I.R.B. 2000-___.**

LOSSES. The taxpayer purchased two debt instruments. The first debt instrument carried an interest rate which would fall to zero upon a set contingency. The other debt instrument interest rate would double upon the same contingency. After the contingency occurred, the first instrument was sold at a loss. The IRS ruled that the loss would not be recognized as deductible because the loss was

offset by the gain in the value of the other debt instrument. **Rev. Rul. 2000-12, I.R.B. 2000-___.**

MARKET SEGMENT TRAINING GUIDE. The IRS has announced the publication of a revised Grain Farmers Market Segment Specialization Program Training Guide.

PASSIVE LOSSES. The taxpayer owned the majority of the stock of an S corporation which provided management services for several partnerships in which the taxpayer owned an interest. The taxpayer actively participated in the management activities of the corporation but received passive income and losses from the partnerships. The taxpayer offset the passive income and nonpassive losses, arguing that was allowed by I.R.C. § 469 because the S corporation and partnerships were related entities with income and deductions arising from the same activities. The IRS argued that the offset was not allowed because the regulations under the statute allowed such offset only for interest items by lenders. The court held that the failure of the IRS to promulgate regulations did not prevent the offset which was otherwise allowable under the letter and intent of the statute. **Hillman v. Comm'r, 114 T.C. No. 6 (2000).**

RELOCATION PAYMENTS. The taxpayer owned a residence which was condemned by the state for use in a highway project. The state negotiated a payment for the fair market value of the residence and the taxpayer received a condemnation reward of \$65,000. The taxpayer then entered into negotiations with the state for payments under the federal Relocation Assistance Program. The parties reached an agreement for \$100,000 which was characterized as payments in addition to the payment for the property. The federal relocation payments are specifically excluded from gross income. The taxpayer argued that the \$65,000 was also relocation money. The court found that the state treated the two payments as separate and for two different purposes, the \$65,000 for the replacement value of the residence and \$100,000 for relocation costs; therefore, the court held that the \$65,000 was taxable to the extent the payment exceeded the taxpayer's basis in the residence. The taxpayer did not raise any issue as to involuntary conversion treatment of the condemnation award. **Nielsen v. Comm'r, 114 T.C. No. 10 (2000).**

WITHHOLDING TAXES. The taxpayers were employees and former employees who had sued their employer for violations of ERISA. The parties reached a settlement which included compensation for various costs of the litigation. The IRS ruled that the taxpayers' attorneys' fees paid under the settlement and the administrative expenses incurred in connection with the litigation or otherwise incurred by the taxpayers did not give rise to wages to the taxpayers for purposes of the FICA, the FUTA, or federal income tax withholding under I.R.C. §§ 3121(a), 3306(b), and 3401(a). Further, no information reporting was required that would report these payments as having been made to the taxpayers. **Ltr. Rul. 200009046, Dec. 29, 1995.**

PRODUCTS LIABILITY

PESTICIDES. The plaintiff used an insecticide on cotton fields and claimed that the insecticide failed to control insects. The plaintiff sued the manufacturer and the seller for breach of implied warranty, breach of good faith and fair dealing, intentional infliction of emotional distress and negligence. The suit was brought in a state court and the defendant sought removal to federal court, based on preemption by FIFRA as a federal question and diversity of parties. Although the seller was located in the plaintiff's state, the defendants argued that the seller was included as a party fraudulently, solely to provide non-diversity of parties. The federal trial court denied the plaintiff's motion to remand the case to state court, agreeing with the defendant that FIFRA completely preempted the state law causes of action and that the seller was not liable on any of the claims. The appellate court reversed, holding that FIFRA did not completely preempt state regulation of pesticides; therefore, a FIFRA preemption defense was not sufficient to raise a federal law question. The court also reversed as to diversity, holding that the pleadings had raised the issue of whether the seller had made representations about the product which the seller knew or should have known were false. **Hart v. Bayer Corp., 199 F.3d 239 (5th Cir. 1999).**

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE. The plaintiff had loaned money to a farmer who gave the plaintiff a security interest in crops to be grown with the money in two counties. The plaintiff filed "Effective Financing Statements" (EFS) for the security interest in the crops in the county where the crops were grown. Each EFS described only the crops grown in the county where the EFS was filed. Only one of the EFSs was filed in the county of the farmer's residence. The EFSs were transmitted to the Nebraska centralized filing system. The farmer delivered some of the crops to the defendant who paid the farmer who failed to pay the plaintiff. The plaintiff sued for conversion based upon its superior security interest in the crops. The defendant had not registered with the central filing system and had not received notice of the EFS filings. The defendant argued that the EFSs were insufficient in that the EFS filed in each county did not describe the crops grown in another county. The court held that the federal farm products rule applied to determine the rights between the parties. The court held that the EFSs were sufficient in that they were transmitted to the central filing system and adequately described all of the crops covered. The court noted that the federal rules do not require any specific filing place for EFSs but only that the EFS information be received by the central filing system. The defendant also raised the defense of waiver of the security interest by the plaintiff by allowing sale of crops without prior consent. The court held that the defense of implied waiver was not allowed in Nebraska where the secured party has filed an

EFS. **AG Services of America, Inc. v. United Grain, Inc., 75 F. Supp.2d 1037 (D. Neb. 1999).**

STATE TAXATION

AGRICULTURAL USE. The plaintiff owned 300 acres of farmland, 56 acres of which was rezoned for commercial use. The plaintiff then sold 32 acres for use as a shopping center. The remaining acres were advertised as for sale. The defendant county assessor valued the remaining commercial acres at full fair market value and the plaintiff sought to have the remaining acres valued as agricultural land as the land was valued before the reassessment. The testimony showed that, during the tax year, the disputed acres were leased to a third party who never actually farmed the acres. Prior to the tax year, the land was enrolled in CRP and other conservation programs which prevented cultivation of the land. The court held that agricultural use valuation, under Tenn. Code § 67-5-1004(1), required only that the owner held the land with the intent to use the land for agricultural purposes, not that the land be actually used for agricultural purposes. Therefore, the appellate court upheld the trial court's ruling that the plaintiff had demonstrated the requisite intent to hold the land for agricultural purposes. **Batson v. East-Land Co., Inc. v. Boyd, 4 S.W.3d 185 (Tenn. Ct. App. 1998).**

CITATION UPDATES

Abbott v. United States, 76 F. Supp.2d 236 (N.D. N.Y. 1999) (court awards and settlements), see p. 13 *supra*.

Grain Land Coop. v. Kar Kim Farms, Inc., 199 F.3d 983 (8th Cir. 1999), *aff'g*, 978 F. Supp. 1267 (D. Minn. 1997) (hedge-to-arrive contracts), see p. 28 *supra*.

AGRICULTURAL LAW PRESS

On the WEB

<http://www.agrilawpress.com>

Visit our internet web site for information on

- *Agricultural Law Manual*
- *Principles of Agricultural Law* (textbook)
- Our publications on CD-ROM
- Seminars by Neil Harl and Roger McEowen
- Links to
 - U.S. courts web sites
 - USDA
 - GPO publications
 - Farm Credit Administration
 - Agricultural law-related web sites
 - American Agricultural Law Ass'n
 - Law libraries, schools and associations
 - General law news

The Agricultural Law Press announces two new annual seminars

SEMINAR IN THE OZARKS

&

SEMINAR IN NEW MEXICO

AGRICULTURAL TAX AND LAW SEMINARS

by Neil E. Harl and Roger A. McEowen

May 31, June 1-3, 2000

Tan-Tar-A Resort, Lake of the Ozarks

August 16-19, 2000

Inn of the Mountain Gods, Mescalero, NM

Come join us for a world-class seminar on the hottest topics in agricultural tax and law. **Space is limited** for these wonderful opportunities to gain expert insight into agricultural law and enjoy the many activities offered by both of these splendid resorts.

The first seminar will be Wednesday, Thursday, Friday and Saturday, May 31, June 1-3, 2000 at the Tan-Tar-A Resort & Spa located on the Lake of the Ozarks located in the heart of the Missouri Ozarks. The second seminar will be Wednesday, Thursday, Friday and Saturday, August 16-19, 2000 at the Inn of the Mountain Gods resort in the south central mountains of New Mexico. Registrants may attend one, two, three or all four days, with separate pricing for each combination. On Wednesday, Dr. Harl will speak about farm and ranch income tax. On Thursday, Dr. Harl will cover farm and ranch estate tax. On Friday, Roger McEowen will cover farm and ranch business planning. On Saturday, Roger McEowen will cover current developments in several other areas of agricultural law. Your registration fee includes a copy of Dr. Neil Harl's seminar manuals, *Farm Income Tax* (almost 300 pages) and *Farm Estate and Business Planning: Annotated Materials* (nearly 500 pages) and a copy of Roger McEowen's outline, all of which will be updated just prior to the seminar. The seminar materials will also be available on CD-ROM for a small additional charge. Continental buffet breakfasts and break refreshments are also included in the registration fee.

Here are some of the major topics to be covered:

- Taxation of debt, taxation of bankruptcy, the latest on SE tax of rental of land to a family-owned entity; income averaging; earned income credit; commodity futures transactions; paying wages in kind.
- Federal estate tax, including 15-year installment payment of federal estate tax, co-ownership discounts, alternate valuation date, special use valuation, family-owned business deduction (FOBD), handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.
- Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.
- Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.
- Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.
- Legal developments in farm contracts, secured transactions, bankruptcy, real property, water law, torts, and environmental law.

Special room discounts are available at both resorts. The resorts feature a variety of splendid guest accommodations and activities, including horseback riding, golf, sailing, hiking, tennis, fishing, and swimming.

The seminar registration fees for current subscribers to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Principles of Agricultural Law* are \$175 (one day), \$340 (two days), \$490 (three days), and \$620 (four days). The registration fees for nonsubscribers are \$195, \$380, \$550 and \$700 respectively. The registration fees are higher for registrations within 30 days prior to the seminar. A registration form is available online at www.agrilawpress.com

For more information, call/fax Robert Achenbach at 1-541-302-1958, or e-mail at robert@agrilawpress.com



Printed on recycled
paper using soy ink.